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June 9, 2008

Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear General Counsel,

MUR# 6023

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COMMISSION
OFFICE OF GENERAL
COUNSEL
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On behalf of Campaign Money Watch, I am writing this complaint to request that the Federal Election Commission conduct an investigation into two important possible violations of federal election law with regard to Sen. John McCain's presidential bid and the John McCain 2008 Inc. committee.

The first matter involves payments made earlier this year by a lobbying firm, the Loeffler Group LLP, to Susan Nelson, National Finance Director for the McCain campaign. The second issue is the reduction of a campaign invoice by over \$100,000. The invoice was from a firm partly owned by McCain campaign manager Rick Davis. Based on the facts included in this letter, there is reason to believe two election law violations have occurred.

The prohibition of corporate contributions to federal officeholders is one of the most important provisions of existing campaign finance law. That both of these matters involve excess or illegal contributions from for-profit entities raises serious questions about the McCain campaign that must be answered. That these matters also involve two of the highest-ranking members of Sen. McCain's campaign provides an urgency, in our view, to resolve these questions.

We have previously written to Sen. McCain's campaign to seek answers to the question regarding the Loeffler Group LLP's potential excess campaign donation. Unfortunately, after more than two weeks we have not yet received a reply. In addition, we do not believe that the campaign has adequately responded to requests for information by reporters on both of these matters. Simply asserting, without evidence, that they have done nothing wrong does not, in our judgment, satisfactorily answer the serious possibility that federal election law has been violated on at least two separate occasions.

Let me turn to the substantive concerns Campaign Money Watch has about the potential illegal or excess campaign contributions to the McCain presidential campaign.

Item #1: The Loeffler Group LLP, a Lobbying Firm, May Have Subsidized a McCain Campaign Staffer's Salary

Most news reports regarding the departure of lobbyist Tom Loeffler from Sen. McCain's campaign focused on the conflicts inherent with his firm's \$15 million in lobbying contracts for the Saudi Arabian government. Until his departure, Mr. Loeffler served the campaign as the National Finance Chairman and National Co-Chair.¹

When his departure was first reported by the news magazine *Newsweek* on its website on May 17, 2008, one central concern of the McCain campaign was that Mr. Loeffler's firm, the Loeffler Group LLP, had

started paying \$15,000 a month last summer to one of its lobbyists, Susan Nelson, after she left to become McCain's full-time finance director, said a source familiar with the arrangement (who asked not to be identified talking about sensitive matters). Campaign officials were told the payments were "severance" for Nelson and that they ended by November. But in "February or March," Loeffler rehired Nelson as a consultant to "help him with his clients" while she continued on the McCain payroll, according to a campaign official who asked not to be identified talking about personnel matters. Federal election law prohibits any outside entity from subsidizing the income of campaign workers. McCain's officials say they have been assured that Nelson did actual work for Loeffler's lobbying clients — and that the payments were proper. But after *NEWSWEEK* posed questions about the matter, they confirmed Loeffler's resignation and the termination of Nelson's consulting contract.²

In our experience, some of the hardest workers on campaigns and those who put in the longest hours are found in the fundraising or finance departments. Given the unending race for campaign contributions on a presidential campaign, and the financial state in which the McCain campaign found itself in during the early winter months (recall, they had not yet paid off their questionable \$4 million loan by February), it is curious that the campaign's national finance director would be moonlighting for her past employer, a lobbying firm.

A search of FEC filings for Ms. Nelson's compensation returns consistent payments beginning in October 2007 and continuing through April 2008 for \$3,154 to \$3,164 per semi-monthly period. The one exception is a larger payment of \$10,774 made on September 30, 2007, presumably for work she did for the campaign prior to October 1, 2007.³

¹ Jim Kuhnhenn, "McCain's National Finance Chair Resigns," Associated Press, May 18, 2008, <http://ap.google.com/article/ALeqM5iotU6oku4DcVweBLpOFmUDEeJQAD9oOGF98o>

² Michael Isikoff, "McCain vs. Lobbyists," *Newsweek*, May 17, 2008, <http://www.newsweek.com/id/137522/output/print>

³ Campaign Money Watch analysis of McCain campaign filings with the Federal Election Commission, <http://www.fec.gov>. Additional information available upon request.

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The "severance" payments from the Loeffler Group LLP described above – "\$15,000 a month last summer" that "ended by November" – dwarfed the approximately \$6,300 monthly salary Ms. Nelson received for her work as Sen. McCain's chief staff fundraiser.⁴

Then payments began again. The Loeffler Group LLP reportedly hired Ms. Nelson again in "February or March." According to the Secretary of the Senate's records, the Loeffler Group LLP had previously listed Ms. Nelson as one of their lobbyists working on behalf their client the European Aeronautic Defence and Space Company (EADS) North America, the parent company of Airbus, as it sought U.S. contracts. The firm removed Ms. Nelson from its Lobbying Disclosure filings with the Secretary of State and stated that her lobbying for EADS ended as of June 2007.

Newspapers reported that EADS/Airbus was awarded a contract worth at least \$40 billion, which could grow to \$100 billion, from the Air Force, on February 29, 2008.⁵ If Ms. Nelson did any lobbying in February for the compensation she received from the Loeffler Group LLP, she and/or the firm would be in violation of lobbying disclosure laws since they did not re-register her as a lobbyist for the client. That matter, we recognize, is beyond the scope of the FEC.

Yet, if we assume she did not conduct any lobbying for a past client, EADS/Airbus, for her previous employer, the Loeffler Group, at the time of a controversial \$40 billion contract award, the question remains: what did she do for the compensation? Since the McCain campaign won't publicly acknowledge what work Ms. Nelson did for the lobbying firm, we are no closer to knowing if these payments were appropriate.

It is only possible that these payments to Ms. Nelson from the Loeffler Group LLP could be categorized as in-kind contributions if we first accept that they are contributions in excess of the individual contribution limits on all the partners of Loeffler Group LLP. In addition, if they are in-kind contributions, they would also be unreported contributions.

The firm is a Limited Liability Partnership (LLP) based in San Antonio, Texas, and as an LLP it is allowed under federal law to make campaign contributions.⁶ Campaign contributions from LLPs are subject to the same limits on individuals, and the contributions made by LLPs are considered as originating from the partners.

⁴ Michael Isikoff, "McCain vs. Lobbyists," Newsweek, May 17, 2008, <http://www.newsweek.com/id/197522/output/print>.

⁵ Leslie Wayne, "U.S.-Europe Team Beats Out Boeing on Big Contract," New York Times, March 1, 2008, <http://www.nytimes.com/2008/03/01/business/01tanker.html>.

⁶ see <http://loefflerllp.com>, accessed 5/30/08.

Furthermore, contributions from LLPs must be distributed between the partners according to the proportion of the profit-sharing of the partners.⁷

A Campaign Money Watch analysis of data provided by the nonpartisan Center for Responsive Politics shows that employees of the Loeffler Group LLP and its affiliates have already given \$43,024 in campaign contributions to Sen. McCain during this election cycle.⁸

Of the five partners listed on the firm's website,⁹ four have already given the federal maximum contribution to Sen. McCain's campaign of \$2,300 in the primary election period. (The remaining partner, Lane Luskey, is described as "a partner and the Senior Democrat with The Loeffler Group" and has not given a contribution in excess of \$200 to Sen. McCain's campaign nor to any of the other candidates for president, according to a search of the Center for Responsive Politics website.¹⁰)

Since four of the five partners of Loeffler Group have contributed the maximum donation to Sen. McCain's campaign, these payments to Ms. Nelson from the lobbying firm could be in-kind contributions only if two other election laws were violated, i.e., failure to disclosure contributions and contributions exceeding the federal limits.

One other option is that the lobbying firm illegally subsidized Ms. Nelson's salary. Neither the Loeffler Group LLP nor the McCain campaign have provided public or clear evidence that Ms. Nelson completed the requisite work for whatever amount she was paid. The McCain campaign "officials say they have been assured that Nelson did actual work for Loeffler's lobbying clients," according to *Newsweek*.¹¹

Let's place this into context: A campaign accepts the assurance of a lobbying firm that payments the firm made to the campaign's top fundraising staff – payments that might place both in jeopardy of serious federal election law violation – are not of public concern. That is no assurance at all.

The FEC ought to fully investigate this matter. Specifically, we propose that the FEC ask the McCain campaign to disclose:

- a) How much Mr. Loeffler's firm paid Ms. Nelson while she was in the full employment of the McCain campaign?

⁷ "Partnerships," Federal Election Commission, December 2004 (updated January 2007)
<http://www.fec.gov/pages/brochures/partner.shtml#basics>. See also Federal Regulations,

11 CFR 110.1(a)-(e),

http://s257.s.akamaitech.net/7/257/2422/14feb2007/500/edocket.access.gpo.gov/cfr_2007/jantr/11cfr110.1.htm

⁸ Campaign Money Watch analysis of data obtained from the nonpartisan Center for Responsive Politics,
<http://www.opensecrets.org>.

⁹ see <http://loefflerllp.com>, accessed 5/30/08.

¹⁰ See <http://www.opensecrets.org>.

¹¹ Michael Isikoff, "McCain vs. Lobbyists," *Newsweek*, May 17, 2008,
<http://www.newsweek.com/id/197522/output/print>.

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- b) What work for which clients, at fair market rates, did Ms. Nelson conduct for the Loeffler Group LLP to warrant the compensation?
- c) Did Ms. Nelson take a leave from or reduce her hours on the campaign during the months she was doing "actual work for Loeffler's lobbying clients"?

There is reason to believe that the Loeffler Group LLP either violated election law by subsidizing Ms. Nelson's salary, or made undisclosed excess campaign contributions, or the campaign has knowingly accepted illegal campaign contributions. If the campaign or the lobbying firm violated election law, we strongly encourage the FEC to fine them to the fullest extent of the law.

Item #2: The McCain Campaign May Have Received an Illegal \$107,475 Corporate Contribution From 3eDC, a Company Partly Owned by Rick Davis, the Campaign Manager

The second issue arises from the campaign's resolution of a previous debt. As NationalJournal.com reported on May 23, 2008, that the campaign

paid off its debt to 3eDC, a private Web company linked to campaign manager Rick Davis and his longtime lobbying pal, Paul Manafort. But there's one big curiosity: Last year, the cash-starved campaign, without explanation, reported to the Federal Election Commission that 3eDC's bill had been reduced by \$107,000.¹²

The total campaign debt to 3eDC, according to NationalJournal.com, was \$1,079,000. The bill was reduced to \$972,000 and paid off by the campaign at a time the campaign was strapped for cash.¹³

Our own analysis of John McCain 2008 Inc.'s filings with the FEC reveal that this unpaid debt to 3eDC to grew quickly in early 2007. Beginning with the April 2007 quarterly report, the McCain campaign was already \$175,802 in debt to the company. That debt had more than quadrupled to \$721,068 by the end of the second quarter filing in July 2007. Yet in the third quarter filing in October 2007, the McCain campaign reported a reduction of \$107,475 in incurred payments. The campaign continued to show debt to 3eDC until the April 2008 monthly filing (covering financial activity in March 2008), when it paid off the remaining \$399,916 to the company.¹⁴

The NationalJournal.com report quoted a former assistant staff director of the FEC saying the matter was worthy of investigation:

¹² Edward T. Pound, "Funny Money," NationalJournal.com, May 23, 2008, http://hotlineblog.nationaljournal.com/archives/2008/05/funny_money.html.

¹³ *ibid*.

¹⁴ Campaign Money Watch review of campaign finance reports filed with the Federal Election Commission, <http://www.fec.gov>, accessed June 4, 2008.

"It's always a serious question for the public and auditors when over \$100,000 is removed without explanation from a financial disclosure report," says Kent Cooper, a political money expert and former FEC official. "Indeed, this raises the question of whether actual services were provided and the bill was reduced, making it an illegal corporate contribution."¹⁵ [emphasis added]

In response to these allegations, the McCain campaign has claimed that there were billing errors on the company's behalf and the matter was resolved. Yet a news story from the *New York Times* last October indicated differently, and noted that Mr. Davis's role in the company was controversial within the campaign.¹⁶ The controversies emerged as Mr. Davis assumed a position of leadership on the campaign in the summer of 2007. On October 23, 2007, the *New York Times* wrote,

Taking over amid accusations that he had used the campaign to enrich one of his companies, [Mr. Davis] began by simply trying to keep things going — reassuring shaken supporters and cutting the budget to the point where a onetime Hollywood blockbuster of a presidential campaign took on the feel of an indie.¹⁷

Later in the same piece, the *New York Times* reported "3eDC billed the campaign more than \$1 million for Web services during the first half of the year" and that Mr. Davis "[began] his new job with triage, cutting costs by eliminating jobs and lopping well-paid political consultants off the payroll. Outstanding bills from contractors were renegotiated."¹⁸ [emphasis added]

It stands to reason that, given the \$107,000 reduction in billing, 3eDC is one of the "outstanding bills" that was "renegotiated." What we do not know is how a campaign manager can renegotiate a contract with a firm that he partly owns without at least the appearance that he has used his influence with both parties to reduce the debt.

We acknowledge there is no requirement that a campaign file additional information that describes why a bill was reduced if there was a simple good faith disagreement about billing. That, indeed, is what the McCain campaign has publicly stated is the case.

Yet the circumstances surrounding this particular transaction, Campaign Money Watch believes, warrant more disclosure than what is publicly available today. Mr. Davis is both the campaign manager of the McCain campaign and the part owner of the

¹⁵ Edward T. Pound, "Funny Money," *NationalJournal.com*, May 23, 2008, http://hotlineblog.nationaljournal.com/archives/2008/05/funny_money.html.

¹⁶ Michael Cooper, "Savior or Machiavelli, McCain Aide Carries On," *New York Times*, October 23, 2007, <http://www.nytimes.com/2007/10/23/us/politics/23davis.html>.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

company whose bill is in question. The bill was reduced by more than \$100,000 at a time when the McCain campaign was actively seeking to curtail and cut costs.

Should this be simply an inaccurate billing matter, additional information from John McCain 2008 Inc. or 3eDC can clear it up. But until this additional information is forthcoming, Campaign Money Watch urges the FEC to conduct a thorough investigation to ensure that Mr. Davis's company did not violate the election law regulations regarding extension of credit, and in doing so, make an illegal corporate contribution to the McCain campaign.¹⁹

The relevant regulation (11 CFR 100.55) reads,

The extension of credit by any person is a contribution unless the credit is extended in the ordinary course of the person's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation. If a creditor fails to make a commercially reasonable attempt to collect the debt, a contribution will result. (See 11 CFR 116.3 and 116.4.) If a debt owed by a political committee is forgiven or settled for less than the amount owed, a contribution results unless such debt is settled in accordance with the standards set forth at 11 CFR 116.3 and 116.4. ²⁰

There is reason to believe that the campaign has violated these provisions. We urge the FEC to investigate whether the reduction of this debt was in concert "with the standards set forth at 11 CFR 116.3 and 116.4."

If the FEC determines that this debt reduction was not conducted in accordance with federal election law regulations, we believe that the campaign would be in violation of accepting an illegal contribution from a corporation unless and until the campaign remedied the billing. If the FEC does find a violation, we would urge the Commission to take appropriate action to fine the McCain campaign and, if necessary, refer the matter to the Department of Justice.

* * *

We are prepared to assist your investigation in any way should you require it, and the news stories referenced in this complaint letter are available upon request. We take your role in overseeing our election laws seriously, and believe that candidates – especially those seeking the highest office in the land – ought to be held accountable for any breach or violation of federal election law.

We trust that those candidates like Sen. McCain who campaign to earn the public's respect on issues of reform will not be given a free pass by the press or by federal regulators when matters like this arise. We believe that you, like us, will see

¹⁹ See 11 CFR 100.55 and 11 CFR 116.3-8.

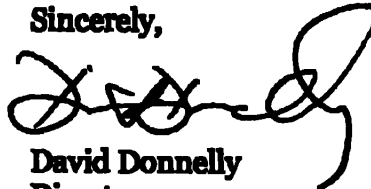
²⁰ See 11 CFR 100.55

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cause for a full investigation into both of these concerns to ensure that the federal election laws have not been violated, or if they have, serious penalties will be assessed on violators.

Thank you in advance for your attention to this letter. Please keep us apprised of the status of this request.

Sincerely,



David Donnelly
Director

District of Columbia: SS

Subscribed and sworn to before me, in my presence,

this 9th day of June, 2008

by David A. Donnelly

[Signature]
Notary Public, D.C.

Chang Ho Choi
Notary Public District of Columbia
My Commission Expires 8/14/08

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